

REMARKS

The examiner rejected Claims 1-26 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-18 and 20-34 of U.S. Patent No. 7,249,086.

Claims 1-12 provisionally rejected on the ground of non-statutory obviousness type double patenting as being unpatentable over claims 1-12, respectively of co-pending Application No. 10/077,182.

Applicants will consider submission of a terminal disclaimer upon an indication of allowable subject matter.

Claim Objections

The examiner objected the claims as follows:

“Claims 1, 18 is objected to because of the following informalities: **"a second different country" should be - a second country -.**” Applicants disagree. One of the features of this claim is that there are two different countries, first country and second country may not clearly delineate that the countries are different. Therefore, different is properly included in the claim.

“Claims 2, 5, 8 and 13 are objected to because of the following informalities: **"the cash owed" should be - the cash amount owed -.**” Applicants have made this amendment to claim 13. This phrase however does not appear in claims 2, 5 and 8.

“Claim 6 is objected to because of the following informalities: **"maximum amount" should be - a maximum cash amount -.**” Applicants have made this amendment.

“Claims 6, 11, 16 is objected to because of the following informalities: **"prescribed amount" should be - prescribed number -.**” Applicant has made these amendments.

“Claims 7 and 12 are objected to because of the following informalities: **"a different country" should be - a second country ~.**” Applicants disagree. See comments above for claim 1.

“Claim 7 is objected to because of the following informalities: **"the second fund" should be - the second financial product -.**” Applicants have made this amendment.

“Claims 12 is objected to because of the following informalities: **The claims recites "a second, number." The comma makes the intent and purpose of the phrase unclear.**” Applicants have made this amendment.

“Claims 17 is objected to because of the following informalities: "the market participant" should be - the participant ~. Also, should "first financial product to" be - first financial product given to - or - first financial product provided to ~. ” Applicants have made these amendments.

“Claims 18 and 23 are objected to because of the following informalities: "to account for cash" should be ~ to account for the cash ~.” Applicants have made these amendments.

“Claims 19 is objected to because of the following informalities: "agent" should be - the agent ~. "first exchange traded fund equated to second exchange traded fund" should be - the first exchange traded fund equated to the second exchange traded fund -.” Applicants have made this amendment.

35 U.S.C § 101

The examiner rejected Claims 1, 7 and 23 under 35 U.S.C. 101 as directed to non-statutory subject matter.

The examiner argues that: “The claims fail to provide a 'useful, concrete, and tangible result and that claims are not tied to a particular apparatus and that the claims preempt ideas, laws of nature or natural phenomena. The examiner is referred to the office action for the details of her reasoning.

Applicants have amended claims 1 and 23 to tie the features to an apparatus (e.g., a computer system) and thus have clearly overcome this aspect of the rejection.

Claim 1, as amended, is directed to statutory subject matter. Claim 1 “a ... method executed on a computer, the method comprising, recording by the computer, delivery ... and recording by the computer, delivery of a prescribed number of shares

The claimed invention accomplishes the practical application of administration of a financial product or a first fund. This is a useful, concrete and tangible result, as required by *State Street Bank & Trust Co. v. Signature Financial Group*, 149 F.3d 1368, 1373, 47 USPQ2d at 1601-02 (Fed. Cir. Jul. 23, 1998). Administration of a financial product or a first fund possesses sufficient "real world" value for which patent protection should be granted. The claimed methods are embodied as computer implemented methods with steps performed by a computer and thus, per se, are not directed to an abstract idea or concept, or simply a starting point for future investigation or research. (See *Brenner v. Manson*, 383 U.S. 51 9, 528-36, 148

USPQ 689, 693-96); *In re Ziegler*, 992, F.2d 1 197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

Applicants' claims and specification describe a practical application for the claimed invention, i.e., administration of a financial product, a first fund that is traded on a first marketplace, - a clearly useful invention to investors and the financial community.

The examiner argues that: "In both cases the claims are conclusory and merely state the goal be achieved. (See preemption discussion)¹." Applicants disagree. The claims set for actions of recording by the computer system, and are not conclusory or merely stating a goal to be achieved.

The examiner argues that according to *State Street* a claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something that is concrete, tangible and useful. As amended, the actions of "recording by the computer" are directed to actions that are tangible and useful, for the purpose of producing a financial product that is traded on a first marketplace.

The examiner also fails to address why the article limitations in claim 7, a computer readable medium, for instance, fails to satisfy the reasoning of *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601 and *In re Alappat* 33 F.3d 1526, 1544, 31 USPQ2d 1545, 1557 (Fed. Cir. 1994)

Indeed, in *State Street*, the patent in issue was:

generally directed to a data processing system (the system) for implementing an investment structure which was developed for use in Signature's business as an administrator and accounting agent for mutual funds. In essence, the system, identified by the proprietary name Hub and Spoke[®], facilitates a structure whereby mutual funds (Spokes) pool their assets in an investment portfolio (Hub) organized as a partnership. This investment configuration

¹ The examiner argued in part under preemption:

Re Claim 1: The claimed invention recites two steps "delivering" and "delivering." These steps merely describe the goal to be achieved by the claimed invention but, fails (sic) to recite how those steps are implemented. For example, before any delivering can occur one must identify how they are getting a prescribed number of shares, a creation unit etc. Also, essential steps are missing. For example, the steps in the dependent claims such as calculating the amount of cash needed to be exchanged relies on the step of calculating the net asset value of the first fund at the close of trading in the second country in which the second fund is trading having already occurred in the independent claim.

provides the administrator of a mutual fund with the advantageous combination of economies of scale in administering investments coupled with the tax advantages of a partnership. *State Street* 33 F.3d at 1370.

The Federal Circuit in *State Street* 33 F.3d at 1373 reasoned that:

The Supreme Court has identified three categories of subject matter that are unpatentable, namely "laws of nature, natural phenomena, and abstract ideas." *Diehr*, 450 U.S. at 185. Of particular relevance to this case, the Court has held that mathematical algorithms are not patentable subject matter to the extent that they are merely abstract ideas. See *Diehr*, 450 U.S. 175, *passim*; *Parker v. Flook*, 437 U.S. 584 (1978); *Gottschalk v. Benson*, 409 U.S. 63 (1972). In *Diehr*, the Court explained that certain types of mathematical subject matter, standing alone, represent nothing more than abstract ideas until reduced to some type of practical application, i.e., "a useful, concrete and tangible result." *Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1557.

Unpatentable mathematical algorithms are identifiable by showing they are merely abstract ideas constituting disembodied concepts or truths that are not "useful." From a practical standpoint, this means that to be patentable an algorithm must be applied in a "useful" way. In *Alappat*, we held that data, transformed by a machine through a series of mathematical calculations to produce a smooth waveform display on a rasterizer monitor, constituted a practical application of an abstract idea (a mathematical algorithm, formula, or calculation), because it produced "a useful, concrete and tangible result"--the smooth waveform.

In *State Street* the Federal Circuit held that "the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces "a useful, concrete and tangible result"--a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades. The Federal Circuit reasoned that the Supreme Court acknowledged that Congress intended 35 U.S.C. 101 to extend to "anything under the sun

that is made by man." *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980) to give full effect to Congress's intent not to place any restrictions on the subject matter for which a patent may be obtained beyond those specifically recited in 101. *State Street* 33 F.3d at 1373.

Applicants contend therefore, that the claims are allowable under 35 U.S.C. 101.

As for the examiner's argument regarding preemption, (see note 1 above) the claims neither recite nor rely on preemption of an idea, law of nature or natural phenomena. Nor have applicants sought to patent a process that comprises every "substantial practical application" of an abstract idea, so as to be "in practical effect a patent on the [abstract idea] itself in contravention of *Gottschalk v. Benson*, 409 US, 63 at 71-72, 175 USPQ 673 at 676 (1972).

35 U.S.C §112

The examiner rejected Claims 1-26 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as "the" invention (emphasis added).

The examiner stated: "Claim 1, 7, 12, 18 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01."

The examiner is referred to the office action for the omitted material from this rejection.

Claim 1 calls for a method ... executed on a computer. The method includes recording by the computer, delivery by a market participant to an agent for the first fund, a creation unit basket of securities ... and recording by the computer, delivery of a prescribed number of shares in the first fund to the market participant, in exchange for the creation unit basket of securities and a second number of shares in the second fund to account for cash that is owed by the agent to the participant.

The examiner argues that: In claims 1, 7, 12, 18 and 23 are conclusory without identifying the process necessary to arrive at that conclusion. For example, in claim 1, the "delivering" described is conclusory without identifying the process necessary to arrive at that conclusion. For example, before delivering can occur one must identify how they are getting a prescribed number of shares, a creation unit etc? What criteria is used for determining what the prescribed number of shares will be etc?"

It is not necessary for the claims to recite every element needed for practical utilization of the claimed subject matter in order for a claim to be proper under 35 U.S.C. §112, second paragraph, *Bendix Corp. v. United States*, 600 F.2d 1364, 1369, 204 U.S.P.Q. 617, 621 (Court of Claims, 1979). It is not the role of the claims to enable one skilled in the art to reproduce the invention, but rather to define the legal metes and bounds of the invention. *In re Geoffe*, 526 F.2d 1393, 1397, 188 U.S.P.Q. 131, (CCPA, 1975). The claims need not provide all operating details but a method claim should recite a positive step. *In re Erlich*, 3 U.S.P.Q. 2d 1011 (Bd. Pat. App. & Int., 1986).

Applicants have set forth the subject matter of their invention, as required by 35 U.S.C. 112, second paragraph. Applicants note that the examiner has not found any prior art that would necessitate a narrowing of the scope of claim 1, as will be set forth *infra*.

One skilled in this art would be capable of appreciating the metes and bounds of this claim and to understand what Applicants consider to be their invention. Therefore, this rejection is improper and should be removed.

The examiner argues regarding claims 1, 7, 12, 18 and 23 that the claims make reference to "intended use/intended results without giving any life or meaning to these statements in the claims. Also, the claims recites language that is passive in the claim because it could be done but, does not have to be done" Applicants disagree. Terms that the examiner has problems with for instance "to account for a cash amount owed " are clearly described in the specification and a calculation of that feature is not needed to distinguish these claims over the prior art. Additionally, it is noted that claim 1 does not recite: "to allow" does not appear in claim. The remaining claims 7, 12, 18 and 23 have been amended to remove this phrase.

The examiner also argues that: "In claims 1, 7, 12, 18 and 23, the dependent claims rely on certain steps and or elements that fail to occur in the independent claims (e.g., net asset value/value." Applicants respond that it is not necessary for these claims to recite these "steps," in order for the claims to distinguish over the cited art. Moreover, these steps need not be performed by the actor that performs the underlying features of the independent claims.

The examiner also argues that: **“In claim 1, the preamble is drawn to a method of producing a financial product but the claimed invention fails to accomplish that result. How is the financial product produced?”** Applicants respond that the shares of claim 1 are produced by a method that includes the steps recited in the claim.

The examiner also argues regarding Claims 1, 7, 12, 18 and 23 concerning “a basis and a creation unit basis. Applicants have amended the claims to clarify this feature.

However for the other questions, comments raised they would be easily ascertainable to one skilled in the art.

For example, the term "substantially" in claims 1, 7, 12, 16 and 19 is not a relative term that would render the claims indefinite, but rather is a term that expresses a degree of tolerance and is therefore proper.

The examiner argues that there is insufficient basis in **“Claims 2, 8, 13, 19 and 24 recite the limitation "the amount of cash needed to be exchanged."** Applicants have amended claim 2 to recite that: **“wherein if the cash that is owed by the agent to the participant, that cash is settled in the second number of shares in the second fund.”** Claim 2, for instance, introduces calculating the amount of cash needed to be exchanged. That calculation can indicate that cash is owned by the participant to the agent or by the agent to the participant. According to claim 2, as amended, if the cash is owed by the agent to the participant that cash is settled in the second number of shares in the second fund.

The examiner also argues that: **“Claims 2, 4-6, 8, 10-11, 13, 15-17, 19, 21-22 and 24-26 recite the limitation "cash", "cash amount" etc. Is this the cash amount owed? The cash amount needed? Or is it some other cash amount?”** Applicants contend that in view of the above amendment and remarks that the claims are proper.

The examiner also argues that: **Claims 2, 8 and 13 recite the limitations "the net asset value of the second fund" and "the second country". There is insufficient antecedent basis for these limitations in the claims.** Applicants contend that there is sufficient antecedent basis in claim 1, which recites second, different country for “second country” as recited in claim 2.

Claims 19 and 24 recite the limitations "the net asset value of at the close of trading of the second exchange-traded fund" and "the second country." Applicants contend that there is sufficient antecedent basis in claim 19 for net asset value, because it is an inherent characteristic of a fund on a given day and the use of the indefinite article is proper in that instance.

Regarding Claims 4, 10 and 15 and the features of "value," it could be value or net asset value, as appropriate.

The examiner argues that: "Claims 6, 11, 22, 26 recite the limitation "transactions." There is insufficient antecedent basis for this limitation in the claim. Since there has been no prior reference to a transaction or transactions in the claim or the claims from which it depends, it is unclear what is referred to." Applicants have amended those claims.

Claims 7, 8, 10, 11, 15 recites the limitation "the second fund". These claims have been amended.

Claims 10, 21 and 25 recite the limitation "the amount of cash exchanged in either direction." Applicants have amended these claims. The feature of "in either direction" clearly describes the cash to exchange from the agent to the market participant or from market participant to the agent. In order to advance prosecution, these claims have been amended to clarify this feature.

The remaining rejections have been overcome by amendment. For instance, claims 7 and 12 recite the limitation "a creation unit basis for a second financial product." However, sufficient antecedent basis would also exist for this limitation in the claim, if the indefinite article were used.

Claims 11, 16 have been amended to recite "the number of first financial product shares."

The examiner argues that: "Claim 12 recites the limitation "record the number of shares issued in the first financial product". This is indefinite because no shares were issued as a part of the claimed invention, it is thus unclear what shares are recorded. Applicants disagree. The feature of instruction to record the number of shares is sufficient to account for issuance of the shares.

Applicants have amended claim 23 to call for second, different country thus providing antecedent basis for the limitation "the second country" in Claim 24.

35 U.S.C § 103

The examiner rejected Claims 1-26 under 35 U.S.C. 103(a) as being unpatentable over Gastineau, US Pub. No. 2001/0025266 in view of "Exchange traded funds—the wave of the future?" by Stuart M. Strauss. The Investment Lawyer. Englewood Cliffs: Apr 2000. Vol. 7, Iss. 4.

The examiner repeats the argument of the prior office action:

Claim 1: Gastineau discloses a method of producing shares of a first fund that is traded on a 'first marketplace, the method comprising:

delivering by a market participant to an agent for the first fund, a creation unit basket of securities having a basis that is substantially the same basis as a creation unit basis for a second fund that is traded on a second marketplace in a different country than that of the first fund (Gastineau, [0001] [0002] [0003] [0004]).

Gastineau fails to explicitly disclose:

delivering a prescribed number of shares in the first fund to the market participant, in exchange for the creation unit basket of securities and a second, number of shares in the second fund to account for cash that is owed by the agent to the participant.

Strauss discloses:

delivering a prescribed number of shares in the first fund to the market participant, in exchange for the creation unit basket of securities and a second, number of shares in the second fund to account for cash that is owed by the agent to the participant (Strauss, pgs. 1-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gastineau by adopting the teachings of Strauss to provide a method further comprising delivering a prescribed number of shares in the first fund to the market participant, in exchange for the creation unit basket of securities and a second, number of shares in the second fund to account for cash that is owed by the agent to the participant.

As suggested by Strauss one would have been motivated to ensure that shares are purchased at NAV.

Applicants disagree. Claim 1 calls for "...recording by the computer, delivery by a market participant to an agent for the first fund, of a creation unit basket of securities having a creation unit basis that is substantially the same as a creation unit basis for a second fund that is traded on a second marketplace in a second, different country than that of the first fund; and recording by the computer, delivery of a prescribed number of shares in the first fund to the market participant, in exchange for the creation unit basket of securities and a second number of shares in the second fund to account for cash that is owed by the agent to the participant."

Gastineau neither describes nor suggests “recording ... delivery... of a creation unit basket of securities having a creation unit basis that is substantially the same as a creation unit basis for a second fund that is traded on a second marketplace in a second, different country.”

Gastineau discloses conventional creation unit basis for production of exchange traded funds. Take for instance, the S&P 500 depository receipts (SPDR's). These are instruments that are traded in the US based on a trust that is in the US and uses an index that is calculated in the US at close of trading in the US. Gastineau does not suggest both a first fund with a creation unit basket of securities that is substantially the same basis as a creation unit basis for a second fund traded on a second marketplace in a second, different country.” That is, Gastineau has no suggestion of, e.g., a trust or a fund, in, e.g., Europe that is based on the S&P 500 (SPDR's) traded in the US.

The examiner has failed to explicitly point out where Gastineau discloses both the first fund and the second fund, as claimed in claim 1, despite repeated requests by Applicant.

The examiner also acknowledges that: **Gastineau fails to explicitly disclose: delivering a prescribed number of shares in the first fund to the market participant, in exchange for the creation unit basket of securities and a second, number of shares in the second fund to account for cash that is owed by the agent to the participant.** Applicants agree that Gastineau neither describes nor suggests the claimed feature.

The examiner uses Strauss to teach the later feature of claim 1. Strauss teaches for instance “Redemption proceeds include the Fund Securities plus cash in an amount equal to the difference between the NAV of the Shares being redeemed and the value of the Fund securities. 10 If the value, however, of the Fund Securities is greater than the NAV of the Shares, a cash payment equal to the differential must be paid to the ETF.” Strauss does not cure any of the deficiencies in Gastineau regarding teaching of the first fund and the second fund, traded in a second, different country from that of the first fund.

Moreover, Strauss does not suggest the latter feature of claim 1. Strauss does not suggest “recording ... delivery of ... shares in the first fund to the market participant ... and a second number of shares in the second fund to account for cash” Strauss merely describes the convention delivery of deliver cash, not shares in the second fund to account for the cash.

Indeed, no combination of Gastineau and Strauss teach both the first fund and the second fund, in the claimed relationship. Therefore, the combination of references inherently could not

suggest the feature of recording delivery of the shares in the first fund and delivery of the shares in the second to account for cash because only one of those funds are taught by the combined teachings of Gastineau and Strauss.

Accordingly, Gastineau and Strauss taken together neither describe nor suggest claim 1.

Claim 7 is allowable over Gastineau and Strauss for analogous reasons as set out above.

The examiner also argues that: "Intended Use: The claim makes several intended use statements which do not carry patentable weight (i.e., "a computer program product residing on a computer readable medium for"; "instructions for"). What follows the statement of intended use (i.e., "for") does not carry patentable weight."

Applicants contend that the examiner's reasoning is inconsistent with well-settled Federal Circuit precedents. *In re Lowry* 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) broadly held that the patent office is not free to ignore claim limitations."²

Instructions to ... "determine a second number of shares in the second financial product to account for cash ... the agent delivering a second number of shares in the second financial product in lieu of the cash." is not a statement of intended use, but rather recites a structural limitation on the computer readable medium that distinguishes that computer readable medium from other computer readable mediums. *Lowry*, 32 F.3d at 1583.

Accordingly the examiner must give patentable weight to all of the features recited in the claims, and therefore no combination of Gastineau with Strauss suggests the claimed computer program product residing on the computer readable medium... since neither reference teaches the features in the claim.

Claim 12 similarly distinguishes over Gastineau and Strauss as discussed for claim 1 and claim 7, there being no intended use statements in the claim.

Claim 18

Claim 18 is allowable over Gastineau and Straus since no combination of these references either describes or suggests ... instructions ... to record creation of the first exchange-traded fund, ... having a prescribed number of shares for trading in a first country, ... produced

² *Lowry* 32 F.3d at 1584

by delivery to ... of a creation unit basket of securities having a basis that is substantially the same basis as a creation unit basis for a second exchange-traded fund that has shares traded on a second marketplace in a second, different country.

As with claim 1 above, Gastineau neither describes nor suggests first exchange-traded fund ... produced by delivery ... of a creation unit basket of securities having a basis that is substantially the same basis as a creation unit basis for a second exchange-traded fund ... traded on a second marketplace in a second, different country.

In addition, no combination of these references suggests instructions to “determine a number of shares in the second exchange-traded fund to account for cash that is owed by the agent to the participant ... and record the prescribed number of shares ... to account for cash.

Claim 23 is allowable over Gastineau and Strauss for analogous reasons as in claim 18.

Dependent claims are allowable at least for the reasons discussed in conjunction with their respective independent claims and reasons of record.

The examiner provided the following discussion. **Applicant argues the term "substantially" is not indefinite. Define explicitly on the record the scope and degree of "substantially" and indicate exactly where in the specification support can be found and/or support for how one of ordinary skill in the art would interpret the term. Applicants have done so, see note 1, above.**

Automation

The examiner also advanced the following:

“It is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. *In re Venner*, 120 USPQ 192 (CCPA 1958) *In re Rundell*, 9 USPQ 220.” Applicants do not disagree with this statement, but stress that the features of the independent claims are not **“manual activity which has accomplished the same result.”** Rather, the features are novel and non-obvious for the reasons discussed above.

The examiner furnished the following supplemental arguments (provided in **Bold**. See Office action for complete text of the examiner's remarks).

The claimed invention would have been obvious to one of ordinary skill in the art. The concept of exchange-traded funds was old and well-known at the time the invention was made. See citation supra for Gastineau. Applicants

contend that while Gastineau teaches SPDR's and a hedging vehicle for trading actively managed funds, Gastineau does not teach that there is any relationship between them that would suggest that they are traded in different countries and have the same (or nearly the same) creation unit basis, and when the net asset value is calculated at the same time, the shares in the first and second fund are arbitragable. It is noted that this is also obvious in light of the teachings of Gastineau and Strauss. This is also a type of in-kind exchange that is common in fields related to bartering, trading and exchanges. The idea that something (i.e., usually other than money) that is an equivalent or near equivalent (i.e., in value, use etc.) can be given as an alternative or replacement for something else.

The examiner argues that: "The concept of in-kind purchase and redemption with respect to exchange-traded funds was old and well-known at the time the invention was made." Applicants do not understand what this statement has to do with the claimed subject matter. The examiner argues that: "In exchange for a given creation unit for a fund, a number of shares plus/minus a cash component could be exchanged, such that the values exchanged are equal. Furthermore, it was old and well-known that this purchase and redemption occurred at net asset value. See citation *supra* for Strauss." Applicants again point out that this statement is not relevant to the claimed subject matter.

The examiner argues that: This³ is also a type of in-kind exchange that old and well-known in fields related to bartering, trading and exchanges. Applicants disagree and request that the examiner furnish documentary evidence that in the context of exchange traded funds that the feature "... a number of shares in the second fund to account for a cash amount owed ..." is old and well known, because this is not apparent from any of the cited art.

Intended use

See discussion above and of record

³ Applicants assume that this refers to (creation unit basis between the first fund and the second fund are the same (or nearly the same) and when the net asset value is taken at the same time, that shares in the second fund could also be used).

Automation

See discussion of record

Hindsight

Applicants requests that the examiner specifically point out where in the prior art the examiner finds the **knowledge** of “a first fund ... trading in a first country... having a creation unit basis that is substantially the same as a creation unit basis for a second fund that is traded on a second marketplace in a second, different country and ... delivery ... of shares in the second fund to account for a cash amount owed

Applicants submit that it is only after gleaning knowledge from applicants' claims and teachings that the examiner can fashion such an argument.

Documentary Evidence

The examiner disagrees with applicants' assertion that a rejection was made on the basis of Official Notice, and points to support in Strauss supra, as first noted in the office action 07/24/07, and the references made of record. Applicants contend that these do not provide the documentary support.

It is believed that all the rejections and/or objections raised by the examiner have been addressed.

In view of the foregoing remarks, applicants respectfully submit that the application is in condition for allowance and such action is respectfully requested at the examiner's earliest convenience.

All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicants have (a) addressed certain comments of the examiner does not mean that the applicants concede other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good

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Serial No. : 10/001,900
Filed : November 14, 2001
Page : 23 of 23

Attorney's Docket No.: 09857-073001

reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicants concede any of the examiner's positions with respect to that claim or other claims.

Please charge the Petition for Extension of Time fee of **\$120** and please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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